

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

**FILED**

MAY 14 2008

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY                      DEPUTY

TXD SERVICES LP,

Plaintiff,

vs.

CHESAPEAKE ENERGY  
CORPORATION,

Defendant.

No. CIV-07-318-C

INSTRUCTIONS TO THE JURY

Instruction No. 1

OPENING

Members of the Jury, you have heard the evidence in this case and in a few minutes you will hear the arguments of counsel. It is now the duty of the Court to instruct you as to the law applicable to this case. You will be provided a written copy of these instructions for your use during deliberations.

You are the judges of the facts, the weight of the evidence, and the credibility of the witnesses. The weight of the evidence is not determined by the number of witnesses testifying on either side. In determining weight or credibility, you may consider the interest, if any, that a witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice if any has been apparent; the candor, fairness, intelligence and demeanor of the witness; the ability of the witness to remember and relate past occurrences; the

witness's means of observation and the opportunity of knowing the matters about which the witness has testified; the inherent probability or improbability of the testimony; and the extent to which the witness has been supported or contradicted by other credible evidence. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, and aided by the knowledge that you each possess in common with other persons, you will reach your conclusions.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys state them, you should base your decision on what you remember.

It is my job to decide what rules of law apply to the case and all the applicable law is contained in these instructions. You must not follow some and ignore others. Even if you disagree or do not understand the reasons for some of the rules, you are bound to follow them.

Instruction No. 2

BURDEN OF PROOF

The burden is upon the plaintiff in a civil action such as this to prove every essential element of its claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence, the jury should find for the defendant.

To "establish by preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who

may have called them, and all exhibits received into evidence, regardless of who may have produced them.

Instruction No. 3

CORPORATE PARTIES

The corporate parties in this case are entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

Corporations can act only through their officers and employees. Any act or omission of an officer or employee while acting within the scope of his or her employment is the act or omission of that corporation.

Instruction No. 4

DAMAGES

Damages, should be in an amount that will fully and fairly compensate TXD Services LP for the injury it has suffered. However, damages may not be awarded in excess of that amount. Furthermore, you are not to award any damages for any loss or injury which TXD may have suffered unless it has been established by a preponderance of the evidence that the loss or injury was caused by the act of Chesapeake Energy Corporation. In any event, TXD may not recover damages in excess of \$11,013,931.38.

Instruction No. 5

DAMAGES - CALCULATION

In determining TXD Services LP's damages as a result of Chesapeake Energy Corporation's breach of the parties drilling contracts, you should consider the following terms from the parties' agreement:

Paragraph 27.4, Early Termination: In the event of any time prior to the end of the term of this contract, operator shall pay contractor an amount equal to the number of days remaining multiplied by the standby rate in paragraph 4.6. Contractor will credit operator day-rate revenue earned from contracting the rig to another operator subsequent to termination through the remainder of the term.

Paragraph 4.6 provides: Standby time rate: \$16,000 per twenty-four (24) hour day.

Paragraph 6.1, Duration of Contract provides: This contract shall remain in full force and effect for a term of twenty-four (24) months commencing on the date specified in paragraph 2 above.

You are instructed that the parties have agreed that the Commencement date is: February 2, 2007.



In accordance with the parties contract, the “Operator” is Chesapeake Energy Corporation and the “Contractor” is TXD Services LP.

Instruction No. 6

MITIGATION OF DAMAGES

You are instructed that a party who claims damages resulting from a breach of contract has a duty under the law to use reasonable diligence to avoid or minimize those damages. Chesapeake has the burden of proving the damages that TXD could have mitigated.

TXD may not recover for any item of damage that it could have avoided through reasonable effort. If you find by a preponderance of the evidence TXD unreasonably failed to take advantage of an opportunity to lessen its damages, you should deny it recovery for those damages which it would have avoided had it taken advantage of the opportunity.

You are the sole judge of whether TXD acted reasonably in avoiding or minimizing its damages. An injured party may not sit idly by when presented with an opportunity to reduce its damages.

However, it is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages.

There has been evidence that TXD was unable to mitigate damages in 2008 because it lost rig 201 to D.B. Zwirn. If you find Chesapeake's breach of the contract caused the loss, TXD is entitled to recover those damages. If not, TXD's damages must end on the date of loss.

Instruction No. 7

CLOSING

When you retire you should elect one person as your presiding juror. That person will preside over the deliberations and speak for you with the Court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide. You must not use any method of chance in arriving at your verdict, nor let sympathy or prejudice affect the outcome.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

A verdict form will be sent to the jury room with you, along with these written instructions of the Court. I suggest you study the verdict form early in your deliberations so you know what you must decide. All of you must agree on a verdict and when you do, the presiding juror will sign the verdict. Notify the bailiff when you have arrived at a verdict so that you may return it to open court.

In a few moments, you will go with the bailiff to the jury room to begin your deliberations. If any of you have cellphones or similar devices with you, you are instructed to be sure they are turned off and then to turn them over to the bailiff as you enter the jury deliberation room. They will be held by the bailiff for you and returned to you after your deliberations are completed and during any lunch break or similar period when you are not deliberating. The purpose of this

requirement is to avoid any interruption or distraction during your deliberations and to avoid any question of outside contact with the jury during your deliberations.

No member of the jury should ever attempt to communicate with me except by a signed writing. If it becomes necessary during your deliberation to communicate with me, you may send a note through the bailiff signed by your presiding juror. In the message do not tell me how you stand on your verdict.

 5/14/08  
ROBIN J. CAUTHRON  
UNITED STATES DISTRICT JUDGE